

FINDING OF EMERGENCY

The Department finds that the readoption of Section 3400(b) is necessary for the immediate preservation of the public peace, health and safety and/or general welfare.

California voters approved Proposition 63 in the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (MHSA), became effective on January 1, 2005. Through imposition of a 1% tax on personal income in excess of \$1 million, the MHSA provides the opportunity for the State Department of Mental Health (DMH) to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, youth, adults, older adults and families. The MHSA addresses a broad continuum of prevention, early intervention and service needs that are designed to work together to reduce the suffering of individuals, as well as the harm to society, which results from untreated mental illness.

The MHSA recognizes the **emergent** nature of the need for new and expanded mental health services in California.

- (a) Failure to provide timely treatment can destroy individuals and families. No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now. No individual or family should have to suffer inadequate or insufficient treatment due to language or cultural barriers to care. Lives can be devastated and families can be financially ruined by the costs of care. Yet, for too many Californians with mental illness, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.
- (b) Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government. Many people left untreated or with insufficient care see their mental illness worsen. Children left untreated often become unable to learn or participate in a normal school environment. Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs.

At the end of 2005, DMH adopted an abbreviated set of emergency regulations, most of which addressed the community services and supports aspect of the MHSA since this is the focus of the Act. Section 3400(b), as filed with the Secretary of State contained an error, needing correcting to ensure **Allowable Costs and Expenditures**, was implemented by the counties in accordance with current law governing allowable expenditures of MHSA monies.

Specifically, Section 3400(b) provides three requirements that must be met by any programs and/or services that are provided with MHSA funds. DMH cannot enter into contracts for services with the counties until these requirements are restored. Without this text, the regulations governing its policies and procedures for prevention and

early intervention are vague. Accordingly, large sums of money, which are needed by the counties in order to provide prevention and intervention services in a severely under-funded system, cannot be properly disbursed. This factor is the justification for urgency.

1. Subsection (b)(1) states the services and supports must be to individuals with severe mental illness and/or severe mental disorders. This subsection is necessary to ensure that the use of the funds is consistent with the Findings and Declaration as stated in the MHSA which recognizes the issues that arise when mental illness/mental disorders are not treated. The passage of Proposition 63, MHSA, provides funding specifically for the treatment of individuals with severe mental illness/disorders.
2. Subsection (b)(2) states services/programs must be designed to be voluntary in nature. This subsection is necessary to ensure the MHSA funds are used to establish and or expand the array of voluntary programs/services offered by the county. The voluntary or involuntary legal status of an individual with serious mental illness/disorders should not affect his/her ability to access these programs/services.
3. Subsection (b)(3) states the funds cannot supplant existing state or county funds utilized to provide mental health services. This subsection is necessary to inform the county that the MHSA funds cannot be used to fund an existing program or service, unless such program or service is being expanded as specified in Section 3400(a) above. This requirement to comply with the non-supplant requirements of Section 3410 is in keeping with specific language contained in Section 5891 of the W&I Code.

On January 13, 2006, DMH submitted an amendment to section 3400(b) to correct this error of omission.

The Office of Administrative Law (OAL) determined that the amended regulation did not meet the exemption provided in law; therefore, DMH filed this modification as an emergency with full OAL review.

AUTHORITY: Section 5898, Welfare and Institutions Code.

REFERENCE: Sections 5813.5(b), 5840, *et seq.*, 5847(a)(1) through (6) and (d), 5848(a), 5878.3(a), 5891, 5892, 5897, and 5898, Welfare and Institutions Code.

The original Economic and Fiscal Impact Statement (STD. 399) signed on December 30, 2005, reflects the modifications. This document is incorporated by reference.

DMH has determined that the proposed regulatory action imposes mandates on county government when County Mental Health Programs apply for funds pursuant to these regulations. However, funds are available through the Mental Health Services Fund created by the Mental Health Services Act and codified in Welfare and Institutions Code, Section 5890 to finance the mandates as required by Part 7(commencing with Section 17500) of Division 4 of the Government Code.